

Draft

Harold - After Talking w the

The James Earl Ray Case

By Jim Lesar

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Nearly twenty-nine years after Dr. Martin Luther King, Jr. was killed, a peculiar conjunction of events has brought a lot of old skeletons rattling out of the closet. These events are: (1) James Earl Ray, the alleged assassin, is dying; (2) a hearing on Ray's request that the bullet which killed Dr. King be subjected to new scientific testing to determine whether it was fired from the alleged murder weapon, and (3) the public support by members of Dr. King's family for a trial.

Unfortunately, the information miasma which surrounds the assassination of President John F. Kennedy, also pertains to the King assassination, although it is far less pervasive, probably because neither the American public or the media is all that interested in the murder of a black leader. The one-sided coverage continued in last Sunday's Outlook section, which carried two articles, both claiming that Ray is the assassin, but none defending Ray. Apparently the Post's idea of fairness is to have one article saying Ray did it alone, while the other reports that he did it as part of a conspiracy.

Having attempted for several years in the 1970s to get James Earl Ray the trial he never had, I have a different view than those expressed by Richard Billings ("James Earl Ray Has Already Had His Day in Court") and Patricia Johnson McMillan ("The \$7,000 Question: Where Did Ray Get the Money?"). Like the late Bernard ("Bud") Fensterwald, who also represented Ray during this period, I think that Ray was a patsy, that he did not shoot Dr. King. And, yes, I

believe there was a "Raul."

When Billings says Ray has had his day in court, it is not entirely clear whether he is referring to the "mini-trial" that took place after Ray, under pressure, agreed to plead guilty "with no embarrassing circumstances to take place in court, or to the show trial staged by the House Select Committee on Assassinations (of which Billings was a part). In fact, Billings actually argues that Ray had two trials.

And so he did. The problem is that both "trials" were farcical, an outrage to traditional concepts of American justice.

To understand why Ray pled guilty, a subject recent media accounts have glossed over, it is necessary to retrace some long-ignored history. Dr. King was killed on April 4, 1968, by a shot fired across the street from where the Lorraine Motel--I think from the bushes rather than the bathroom window at the rear of the roominghouse where Ray briefly visited. Two months later, James Earl Ray, travelling under an alias, was arrested at London's Heathrow airport (but not, as Billings would have it, by the Royal Canadian Mounted Police. Even in the days when Sgt. Preston and his huskies rode the airwaves, as the Post should know, the arrest powers of the Mounties were limited to Canadian territory).

Lodged in an English prison, Ray immediately sought American legal help. He wrote two lawyers: F. Lee Bailey, even then our premier defense attorney, and Arthur Hanes, Sr., an ex-FBI agent and former Mayor of Birmingham, Alabama. Press reports indicate that Bailey declined to represent Ray because he had previously represented members of the King family. Thereby hangs a dispirit-

ing tale of how wildly awry American justice can sometimes go.

Hanes agreed to represent Ray and left immediately for London. Before he left, he was approached by author William Bradford Huie, a fellow Alabaman with an interest in civil rights matters. Huie knew Ray would not be able to afford a lawyer, so he offered a deal: he would finance the trial in return for the exclusive right to publish Ray's story. Hanes agreed, and before he had ever met or talked to his prospective client, he had drawn up a contract for Ray to sign. Upon arrival in London, he presented the contract to Ray, and Ray, who has only an eighth grade education, signed. Hanes now had two clients: Huie and Ray.

It did not take long for the potential conflict to first manifest itself. The contract provided that Hanes did not get paid until Ray was ex-tradited to the United States for trial. Ray had a viable defense to extradition under the terms of the Anglo-American extradition treaty, which contains an exception for political offenses. Hanes advised Ray not to pursue an extradition appeal but return to Memphis to stand trial.

Returned to Memphis, Ray was placed in a special cell. Lights burned in the cell 24-hours a day, and every 15 minutes two guards stationed outside the cell wrote down their observations of Ray's activities. The Sheriff of Shelby County, in connivance with the DA's office, intercepted and copied Ray's correspondence with Huie, his lawyers, and even the trial judge, Preston W. Battle.

Trial was initially set for November 12, 1968. It was preceded by a wave of nationwide publicity generated by a series of articles in Look magazine written by Huie, the defense paymaster.

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Look, now defunct, was then the leading mass market magazine in America, with a weekly circulation of approximately 6,000,000 copies. The Look articles, which were based on Huie's correspondence with Ray, proclaimed that Ray was part of a conspiracy to kill Dr. King. They impacted just as Ray was about to trial.

As the trial date approached, a conflict developed between Ray and his counsel. Ray wanted to take the stand in his own defense; Hanes didn't want him to. Huie, too, was worried about the possibility that Ray might take the stand. On November 1, 1968, he flew Ray's brother Jerry down to Hartselle, Alabama, plied him with whiskey, and told him that if Ray took the witness stand, it would ruin his book. The exclusive deal that Huie had would go out the window, since everything Ray had told him would be a matter of public record. He offered to pay Jerry Ray, James Earl Ray or any member of the Ray family \$12,000 if they could persuade Ray not to take the witness stand.

Instead of accepting this bribe, Jerry returned to St. Louis on the air ticket provided by Huie. A few days later he went to Memphis to visit Ray. He told Ray that Hanes was not working Huie, not him, and he suggested that Ray fire Hanes and hire Houston lawyer Percy Foreman. Ray said he didn't want Foreman, he wanted a local lawyer. Jerry did contact a Memphis lawyer, who said the case was too big for him. So Jerry decided to contact Foreman. After some back-and-forth, Foreman agreed to fly to Memphis. He told Jerry to meet him at the airport and bring the Hanes/Huie/Ray contracts with him.

On November 10, 1968 just two days before the scheduled trial,

Jerry and another brother, John, met Foreman at the airport. Foreman looked at the contracts and said he could break them because Ray had been taken advantage of due to his lack of education. They then went to the Shelby County Jail, where Foreman arranged to have Ray fire Hanes. He told Ray that his fee would be \$150,000. As a retainer, he had Ray sign over the alleged murder weapon and Ray's 1966 white Mustang. He assured Ray that he would not get involved in any book contracts until after the trial. In fact, two weeks later he met with with Huie in Fort Worth to discuss getting him in the contracts and Hanes out. Only Foreman wanted 60% of the literary proceeds, not the mere 42% that Hanes was entitled to (ater Ray had assigned his share over to Hanes).

On Novembver 12th, the day the trial was to begin, Ray fired Hanes and Forman entered the case. Judge Battle reluctantly approved the change and made it clear that he did not expect any further delays or change of counsel.

Thereafter, things fell into a doldrum. Foreman met with his client only briefly and did no investigative work on the case. On December 18th, Foreman appeared in Memphis and got Judge Battle to appoint the Public Defender, Hugh Stanton, Jr. as co-counsel. Stanton was supposed to do the investigative leg work that Foreman failed to do. Stanton did nothing for over a month. Then, on January 20, 1969, he made his first--and only--attempt to interview Ray. Ray, who had not been consulted on Stanton's appointment, threw him out of the jail, saying he wouldn't let the Public Defender represent him in a traffic case.

At the end of January, Huie came to Memphis to pay defense at-

torney Foreman \$5,000. Previously, Huie had kept his distance from Memphis, remaining in Alabama to avoid the consequences of a contempt citation that Judge Battle had issued as a result of the pretrial publicity engendered by Huie's Look magazine articles. No sooner had he arrived in Memphis, than the Shelby County DA subpoenaed him to appear before the Grand Jury. On February 7th, Huie appeared before the Grand Jury and "testified" that Ray and Ray alone killed Dr. King. Defense attorney Foreman, who had just received a \$,000 check from Huie, made no attempt to block Huie's appearance before the Grand Jury.

Four days after Huie testified against Ray to the Grand Jury, Shelby County DA Phil Canalae notified Foreman that he planned to call Huie as a State's witness as Ray's trial. This presented Foreman with a severe conflict. The prosecution was threatening to call the man who was paying Foreman's fee as a witness against his client.

This possibility confronted Foreman with extreme public embarrassment and possible disbarment. On February 13th, the day after he received Canale's letter, Foreman began a campaign to pressure Ray to plead guilty and took other actions which undermined Ray's confidence in him. He wrote Ray that he thought "there is a little more than a 99% chance of your receiving a death penalty verdict if your case goes to trial[;] . . . there is a 100% chance of a guilty verdict." Huie joined in the campaign, writing Ray that Judge Battle believe that the Look magazine articles "had made a fair trial almost impossible."

This was a point on which Ray was sensitive. He had himself

written Judge Battle a letter complaining about the pretrial publicity--a letter which the Sheriff duly intercepted, copied, and gave to the DA. Foreman, too, had denounced the damage done to Ray's rights by the Look articles, and he had talked to Ray about suing Huie and Look. But now Foreman was telling him that even without the prejudicial Look-generated publicity, he was certain to be convicted and virtually dead certain to be electrocuted.

When Ray resisted the Foreman/Huie campaign, Foreman travelled to Maplewood, Missouri, where he met with members of the Ray family and pleaded with them to get Ray to plead guilty. Among his arguments: Ray would "burn" if he went to trial; he would be tried by a "blue ribbon" jury with common people on it that would want to make an example of him; and the jury would be worried that blacks would burn down Memphis if no conviction was obtained. He also said that he would bring into the case a Tennessee lawyer, John J. Hooker, Jr., who was then running for Governor, give him a half-million dollars worth of publicity, and after he was elected, get him to give Ray a pardon.

On his return to Memphis, Foreman reported to Ray that his family wanted Ray to plead guilty. This was a deliberate falsehood, as Ray learned when his brother Jerry visited him a few days later. But Foreman was successful in getting Ray to authorize him to enter into to guilty plea negotiations, even though Ray says he told Foreman he did not intend to plead guilty.

What ensued was a battle of wits between attorney and client, with Ray trying to force Foreman either to go to trial or to withdraw from the case, and with Foreman trying to induce in Ray

the belief that he could not trust Foreman and dared not to go to trial with him. Foreman held the trump card. First, he undermined Ray's confidence in him by advancing reasons for pleading guilty that Ray knew were spurious, and by telling the Court that he was unprepared to go to trial. Second, when Ray asked Foreman to withdraw from the case, Foreman reminded him that Judge Battle had said in court that he would either go to trial with Foreman or the Public Defender. Believing that Stanton could not adequately represent him, Ray rejected this alternative.

Foreman had Ray boxed in. He could not trust Foreman to defend him. He thought if he went to trial with Foreman, Foreman would throw the case. In view of Judge Battle's admonition, he concluded he would not be allowed to change attorneys again, even if he could afford one, which he couldn't. This meant going to trial with the Public Defender who he had never wanted as his attorney and who he felt could not adequately represent him.

Under these circumstances, Ray gave in to the pressure on March 7, 1969, and agreed to enter a plea of guilty on Monday, March 10th, and accept the maximum possible sentence of 99 years. But over the weekend, the deal almost fell apart. Word that Ray was thinking about firing Foreman leaked out, and on Sunday, March 9th, Foreman flew in from Houston to negotiate a new deal with Ray. Or rather, two deals, set forth in two letter agreements. The first recited that a guilty plea would "shorten the trial considerably," thus saving Foreman a lot of time. In consideration of this, Foreman was willing to limit his fee to \$165,000 and assign the amount accruing under the Huie contracts to Ray or his

designee, subject to one condition: that **"the plea is entered and the sentence accepted and no embarrassing circumstances take place in the courtroom. . . ."**

Ray agreed to accept this deal, but he had his own condition for a deal. He told Foreman he needed \$500 so he could hire a new attorney to overturn the guilty plea he was going to enter the next day. Foreman had no problem with this condition. He drafted a second letter agreement providing that he would advance Jerry Ray \$500 and add it to his \$165,000 bill, but the agreement specified that this advance, too, **"is contingent upon the plea of guilty and sentence going through on March 10, 1969, without any unseemly conduct on your part in court."**

These letters remain to me evidence that that the American system of justice was thoroughly corrupted in the Ray case. Billings quotes Prof. G. Robert Blakey, who ran the House Select Committee on Assassinations,